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ALEXANDER L. STEVAS,
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No. 84-767

IN THE

# Supreme Court of the United States

OCTOBER TERM, 1984

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MICHAEL CARR

*Petitioner*

*- vs. -*

UNITED STATES OF AMERICA

*Respondent*

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ON PETITION FOR WRIT OF CERTIORARI TO THE
UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

## SUPPLEMENTAL APPENDIX

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THE COURT: The Court has seriously considered this motion from every facet. I have read the cases. I have read the briefs. I have listened to the arguments.

There is no absolute right to withdraw a guilty plea. Of course, it must turn on the particular facts of every case. And based on all the allegations, based on the arguments and all the evidence and the record that's in this case, the defendant's motion to withdraw his plea of guilty is hereby overruled and denied.

Based on the case of U.S. versus Presley, 602 Fed. 2nd 709, which is a Fifth Circuit '79 case, the court points out one where the close assistance of counsel was available. There's no question, this man, there's no better counsel in Texas than Roy Minton and Mr. Burton, who have—they are extremely experienced criminal attorneys in defense matters.

The parties were warned by this court in the very beginning in July of 1982 about the conflict of interest, and it was apparent that they thoroughly understood what we were talking about. This was not something that was called to their attention because this court called it to their attention, and the record will so show. I think it was July 30th, 1982. Might have been August the 30th. But the record will show.

And, of course, you've got all kinds of different theories and versions as to how to defend cases and strategy. Lawyers have different strategies. Certainly this court can't let different lawyers with different strategies come in to change a plea just because of the strategy. But the second thing is there's just no question, in this Court's opinion and according to the record, but what this was a plea by Defendant Carr that was knowingly and voluntarily made. You just can't convince this court that a man of this ability and character and experience in the business world—and, as I have already stated, he was the insurance expert. He had expertise in this field.

Of course, the whole thing—and I think where much of the problem relates to is the particular count, the 6. Maybe you ought to let Mr. Carr pled guilty to one of the mail fraud counts on the insurance policies, and he might not have as much objection to that as he does to the tax matter. Maybe that is where the mistake has been made, if there has been a mistake.

But the evidence is so clear that there was a voluntary, knowing plea on the part of Defendant Carr. And then certainly—and this is not the real reason. Of course, this is a matter that the Court points

out in U.S. versus Presley, and that is where judicial resources would be conserved. There is no question about that. Here is a case of great magnitude. The Court has set aside two to three weeks to try the case, and just a few days before I granted a continuance in a backup case to it because this one was going to take two to three weeks to try, and I had been informed by Mr. Eddins and the attorneys—in fact, daily I asked Mr. Eddins if there was any chance, and I believe it was Saturday night, as I recall—it was already dark. I was home—that he called me and said, "I have got some good news. It looks like we have got a plea agreement worked out, and we may not have to have that two- or three-week trial." And that's the first knowledge this court had of any such situation, and we didn't even get it in time to call off the jurors, as I recall. We had the whole basement jury room full of jurors on that day. Normally, if we think there's going to be a plea agreement, we are not going to trial, all our jurors call in on Friday after 5:00 o'clock. Well, we didn't get any word before Friday at 5:00 o'clock that we were going to have a plea, so we had a number of jurors for this panel here to be—from which this jury was to be selected.

The defendant entered into the plea agreement, and, of course, it goes without saying that still there was a lot of expenditures expended with the jurors and certain witnesses that were already here, not quite all the witnesses were here at the time. But there's no question but what the third element pointed out by Presley, whether judicial resources would be conserved, goes without question.

And another thing: Defendant got the benefit of the plea bargain. This defendant was sitting there with six counts facing him. A jury—he might not have been convicted. I know that. But at least the maximum that he faced went down to a five-year maximum that he can be sentenced on this one count when he was facing, I guess it was, 30. I think that is what it is. It is six counts, and each one had a maximum of five. And then you had the amount of fines. I don't remember at this point. But at least the confinement period went from a possible 30 years down to five years. So the defendant got great benefit from this plea agreement.

In addition to the Presley case, the Court is relying on the case of U.S. versus Ridriguez DeMayo, which is at 674 Fed. 2nd 1122, which is a Fifth Circuit case; the case of U.S. versus Rasmussen, which is 642 Fed. 2nd at 165, which is likewise a Fifth Circuit case.

The Court also relies on United States versus Simmons, which is 497 Fed. 2nd 177, and this is particularly with regard to the issue

of prejudice. And also that same issue of prejudice is the case of United States versus Scarborough, which is 527 Fed. Supplement 380. And then likewise United States versus Barker, which is 514 Fed. 2nd 208.

These are a number of cases that the Court is relying on in refusing to permit the withdrawal of this plea of guilty. There are many, many more factors which this court could state for the record, but I think I stated a number.

Under the facts of this case, it's the feeling of this court that if this defendant is permitted to withdraw his plea of guilty under these set of facts, I dare say that there isn't a plea of guilty that was ever accepted in the courts that couldn't come in and be withdrawn.

For this and all these reasons, the defendant's motion to withdraw—Defendant Carr's motion to withdraw—plea is overruled and denied.

MR. COLVIN: Your Honor, if the Court has concluded its findings of fact, we would, of course, object and except to the Court's ruling respectfully.

THE COURT: Yes, you have your objection.

MR. COLVIN: And at the proper time we may give our notice of appeal.

THE COURT: All right. 6 R. 72-77.